

THE HON'BLE SRI JUSTICE V.V.S.RAO

-
WRIT PETITION No.4134 of 2002

-
01.11.2007

-
Between:

Rednam Nanda Kumar, S/o.late Gurunadh

...Petitioner

And

The Special Officer-cum-Competent Authority,
Urban Land Ceiling, Visakhapatnam

And another

...Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.4134 of 2002

ORDER:

This writ petition is filed for a writ of Certiorari to call for the records pertaining to ULC Appeal No.VSP.102/97, dated 26.7.2001, passed by second respondent confirming the order dated 31.3.1997 in CC No.5593/76/C2 passed by first respondent.

The brief fact of the matter which is not in dispute is as follows. Petitioner is owner of land bearing No.10-12-7 in T.S.No.1048 situated at Waltair Ward known as Rednam Gardens, which he constructed in 1964. The house stands on the land admeasuring 1365 Sq.mts. After Urban Land (Ceiling & Regulation) Act, 1976 (the Act, for brevity) came into force, petitioner filed declaration under Section 6(1) of the Act being CC No.5594/76. Petitioner's son, Gurunadh, also filed declaration being CC No.5593/76. Petitioner declared land in T.S.No.1048 and also land covered by survey No.5/1P and 5/2P situated at China Waltair was acquired by the Government. After processing the same, first respondent passed common order on 27.2.1984 in both the declarations declaring petitioner as surplus landholder of 2300.2 Sq.mts. This was surrendered and stood vested in the Government.

Petitioner questioned Land Acquisition (LA) proceedings proposing to acquire land in survey Nos.5/1P and 5/2P. Writ petitions being W.P.Nos.2715, 5563 and 5564 of 1979 and W.P.No.904 of 1980 were allowed on 22.4.1981. The LA Proceedings were quashed. The orders of learned Single Judge were confirmed by a Division Bench of this Court as well as Supreme Court. The land was restored to petitioner.

First respondent served notice under Section 15 of the Act

directing petitioner to file statement in Form No.1 in view of the judgment of Supreme Court quashing the LA proceedings. Petitioner submitted objections on 03.5.1996. After considering the same, first respondent passed orders declaring petitioner as surplus landholder to the extent of 5416 Sq.mts including 2300 Sq.mts., which was taken possession earlier. First respondent also modified draft statement under Section 8(1) of the Act as well as final statement under Section 8(4) of the Act issued earlier on 27.2.1984. Aggrieved by the same, petitioner preferred ULC Appeal before second respondent, who dismissed the same on 26.7.2001.

First respondent has filed counter affidavit justifying the revision of draft statement as well as final statement having regard to the orders of the High Court and Supreme Court quashing the LA proceedings. It is also alleged that when the Act came into force, son of petitioner, Gurunadh, being a minor, his holding was computed to the holding of writ petitioner declaring 2300.2 Sq.mts as surplus. This was revised to 5420 Sq.mts as the land, which was initially acquired, was restored to petitioner having regard to the orders of High Court quashing the LA proceedings.

Learned Counsel for petitioner submits that first respondent erred in reopening the final statements dated 27.2.1984 in CC Nos.5593 and 5594/76. He nextly contends that first respondent erred in computing the land occupied by structures in T.S.NO.1048 even though abundant evidence was produced to that effect. He would next urge that unmarried major daughter of petitioner was entitled for one unit and both respondents erred in not allowing the same.

Learned Assistant Government Pleader for Urban Land Ceiling submits that as per Section 15 of the Act, if the declarant acquired any right, title or possession or interest in any urban property subsequent to filing of the declaration or coming into force of the Act, it is open to the Special Officer to revise/modify the final statement. He would contend that in fact it is the duty of declarant to file additional declaration in which event the entire extent of land shall be computed allowing appropriate exclusions from the land held by the declarant. He points that whether son or daughter – if they are minors as on the date of the Act came into force i.e., 17.2.1976 – they would not be entitled for additional unit in addition to family unit.

This Court has perused the order passed by first respondent as well as original authority. After giving anxious consideration, this Court is not able to countenance the submission of learned Counsel for petitioner insofar as the structures, which allegedly exist on the land in T.S.No.1048/P. This Court is also not able to accept the submission that the land, which reverted to petitioner from Land Acquisition

Authority cannot be computed in the holding, also cannot be accepted.

After receiving the notice dated 20.1.1996 calling upon petitioner to submit explanation as to why draft statement and final statement issued in 1984 should not be revised, petitioner submitted three objections. They are: (1) the land with the building on the ground in T.S.No.1048 is 1365 Sq.mts and therefore the same cannot be computed to the holding as per the decision of Supreme Court in **Meera Gupta (Smt.) v State of West Bengal**^[1]; (2) the land admeasuring 1365 Sq.mts in survey No.5/1 situated at China Waltair is covered by approach road and therefore it should be deleted from the holding; and (3) the land in survey No.5/2 admeasuring 1365 Sq.mts fell to the share of R.Nalini, major daughter of the declarant, in the family partition in 1974 before the Act came into force and therefore the same cannot be computed. Dealing with first objection, Special Officer observed that, *“the declarant did not file any corroborative evidence to establish that there was an old structure prior to commencement of ULC Act”*. This is a question of fact and when both the Authorities below found that there was no evidence to support the plea of declarant, the same cannot be agitated in a writ petition and the matter must rest there. Regarding second objection that the land in survey No.5/1 is partly covered by approach road requiring exclusion from the holding, Special Officer held as below.

Further, on inspection, it is found that the possession of the land is with declarant. As such, the objection raised by the counsel for the declarant is not tenable and it is rejected and the said land of 1720 Sq.mts in S.No.5/1 part of China Waltair village is included in the holding of the declarant.

Whether a major daughter is entitled for one unit of 1500 Sq.mts apart from the family unit holding? Section 2(f) of the Act defines “family” means the individual, the wife or husband, as the case may be, of such individual and their unmarried minor children. Therefore family of a person includes wife and all unmarried minor children. An individual who has unmarried minor children – whether sons or daughters – are entitled to one family unit. By necessary corollary unmarried major children including unmarried major daughter cannot be treated as belonging to family for the purpose of the Act in the matter of computation. Though a minor child being a member of family of a person is not entitled for separate unit, the unmarried major son or daughter is entitled for a separate unit of 1500 Sq.mts (in Visakhapatnam Urban Agglomeration).

Learned Counsel for petitioner has placed before this Court letter of Government of India in Ministry of Urban Affairs to Secretary,

Government of Andhra Pradesh in Revenue Department, enclosing a copy of the letter of Government of India to Government of Gujarat. Letter dated 21.5.1997 from Government of India in Ministry of Defence to the Secretary to Government of Gujarat in Revenue Department, Gandhinagar reads as follows.

Sir,

I am directed to order to your letter No.8/30/General/V.4/1997, Dt.10.07.1997 making a clarification whether share of major children (daughter in particular) on the date of commencement of the Urban Land (Ceiling & Regulation) Act 1976 should be given irrespective of the fact whether father was alive or not on that date.

2) The matter has been examined in detail and it is informed that the Urban Land (Ceiling & Regulation) Act provides that every person holding vacant land in excess of the ceiling from the commencement of the Act is required to file a return under section 6 of the Act. Section 2(f) of the Act defines "family" in relation to a person. It means the individual, the wife or husband as the case may be, or such individual and their unmarried minor children. From the definition it is clear that vacant land held by an individual, his/her spouse and his unmarried minor children are clubbed together to find the extent of vacant land holding of a family.

3) From the definition of family is evident that share of the children, who were majors at the time of commencement of the Act, is not to be taken into account because such major children are required to file their separate returns as an individual. Now, the question is whether share of major children, at the commencement of the Act, should be allowed only in cases where father was not alive at the commencement of the Act or in all cases. The question of taking into account the share of major children (both son and daughter) in the event of death of father has already been settled by the Hon'ble Gujarat High Court in the special civil application No.5279/1995 (Government of Gujarat V/s. Nirmal Roen Govardhandas Batt & others) also upheld by the Supreme Court.

4) Regarding share of major children (both and daughter), in the property of father, who was alive the commencement of the Act, it is clarified that it should be taken into account because such children do not fall part of the family as per the definition. At the same time they have a legal right in the property. This view is also supported by Section 4(7) of the Act.

5) It is also relevant to mention that the Act mentions about children and not a son or a daughter. Hence, both are to be treated equally. It appears that the State of Gujarat has been considering the share of major son only in cases where father was alive at the commencement of the Act and not of a major daughter if there is so, it is against Article 14 of the

constitution. Hence, share of major children (both son and daughter) the property of father at the commencement of the Act should be treated separately irrespective of the fact whether or not the father was alive on that day.

6) This issue with the approval of Secretary (Urban Development).

Yours faithfully,
(Sd/-)
(LAJPAT R.)

// TRUE COPY //

For Deputy Secretary to the
Government of India,
Sd/-
Section Officer.

It is needless to point out that all the executive instructions issued by the Government of India are binding on the State Government having regard to the overriding effect given to the Act under Section 42 of the Act. Therefore major daughter is also entitled to a share. First respondent in his order erroneously held that Nalini, major daughter of petitioner, is not entitled for a share under Hindu Succession Act, 1956. Therefore this needs to be rectified.

In the result, for the above reasons, the writ petition is partly allowed, observing that first respondent should issue fresh orders allowing one unit to an extent of 1500 Sq.mts to Smt.R.Nalini, daughter of petitioner. Insofar as other aspects are concerned, orders of first respondent as confirmed by second respondent shall stand confirmed. No costs.

(V.V.S.RAO, J)

November 01, 2007
YS

[\[1\]](#) AIR 1992 SC 1567 = (1992) 2 SCC 494